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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,208	01/21/2004	Thomas B. White		2513

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BODNER & O'ROURKE, L.L.P.
SUITE 108
425 BROADHOLLOW ROAD
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EXAMINER

BATSON, VICTOR D

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/762,208	Applicant(s) WHITE ET AL.	
	Examiner Victor Batson	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 9, 11, 12, 14, 16 and 34-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 9, 11, 12, 14, 34, 36-55 is/are rejected.
- 7) ☒ Claim(s) 16 and 35-37 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 11, 12, 14, 34, 38-53 are rejected under 35 U.S.C. 102(b) as being anticipated by Spurgin (5,653,206).

Spurgin discloses a hydraulic system 30 including a top member, bottom member, and a pair of side members being hollow in cross section such that fluid can flow from one member to another. Concerning claims 14 & 15, Spurgin discloses the system as providing cooling, which inherently meets the limitation of the material being of low thermal resistance. Additionally, member 48 is considered a baffle and regarding claim 4, filter 28 is considered the attachment. Concerning claims 10-13, the inside of filter 28 is considered a heat sink and the outer surface is considered insulation. Concerning claim 16, the motorcycle or engine, is considered the implement. Additionally, member 46 is considered the means to attach said tank to a tractor, and the stabilizer bars and flanges are considered the frame attachment areas and lower frame sections (unnumbered) that connect lower guard sections 42 & 44 to connectors 72. Concerning claims 50, 51, 53 member 46 is considered a vibratory plow hinge flange, with the holes that encompass frame members 20, considered locking pin holes. Concerning claim 52, member 46 is considered a trencher mount.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5,7,9, are rejected under 35 U.S.C. 103(a) as being unpatentable over Spurgin (5,653,206).

Spurgin discloses a hydraulic system as described previously, but lacks using fins.

The examiner takes official notice that it is known in the art to use fins with a cooling system (see Japanese reference 5-338573) as well as a means to release pressure. Fins are used to provide better cooling, and pressure release means are used to eliminate the build up of pressure within the system.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Spurgin by using fins and a means to release pressure since these systems are known to be used with cooling systems to enhance cooling and reduce a system pressure build-up.

Concerning the claimed ranges regarding the size of the frame (claims 17-32), it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the frame within the claimed ranges since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art (see MPEP 2144.05).

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Furthermore the examiner notes that the claimed ranges essentially involve a change of size of the frame. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the frame with the claimed size limitations since such a modification would have involved a mere change in the size of a component. A change of size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Allowable Subject Matter

Claims 16,35-37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 10/19/05 have been fully considered but they are not persuasive. Applicant argues that the invention relates to tractors and hydraulic systems used by tractors while the device of Spurgin does not teach or suggest a hydraulic system for powering a tractor implement.

In response to applicant's argument, the examiner notes that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. Applicant's claimed structure is directed to a fluid reservoir. Similarly, regarding applicant's "adapted to" recitations, the examiner noted that it has been held that the recitation that an element is "adapted to" perform a function is not a

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positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Batson whose telephone number is (571) 272-6987. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

December 22, 2005



Victor Batson
Primary Examiner
Art Unit 3671